

***Lexicon of International Legal Terms and Phrases
Relevant to Borders and Security***
9 March 2000

The attached lexicon contains definitions of legal terms and phrases potentially relevant to the issues of borders and security. The following terms are defined:

1. airspace
2. boundary river
3. condominium
4. contiguous zone
5. continental shelf
6. exclusive economic zone
7. Green Line
8. high seas
9. internal waters
10. innocent passage
11. international leases
12. jurisdiction
13. sovereignty
14. *terra nullius*
15. territorial sea
16. territorial subsoil
17. *thalweg*

Please note that words highlighted in bold in the attached definitions are defined elsewhere in the lexicon.

Please let us know if we have omitted any relevant terms. As we continue our preparations for negotiations, we will add new terms to the lexicon.

1. airspace

The airspace superjacent to land territory, **internal waters**, and the **territorial sea** is in law a part of state territory. As a consequence, other States may only use such

airspace for navigation or other purposes – and only with the agreement of the territorial sovereign. (The law does not permit a right of **innocent passage** through a State’s airspace, or even through airspace over a State’s **territorial sea**.)

2. boundary river

A boundary river separates different States from each other. Boundary rivers belong to the territory of the states they separate, the boundary line usually running either through the middle of the river or through the middle of the mid-channel of the river.

Pluri-national or multinational rivers, which run successively through two or more states, belong successively to the territories of the states drained by them.¹ As regards both boundary rivers and pluri-national rivers, the riparian states can regulate navigation on the parts of these rivers that they own.

3. condominium

International law recognizes the “condominium”, which exists when two or more states exercise *sovereignty* conjointly over a territory. For instance, the Sudan was under the condominium of Great Britain and Egypt between 1898 and 1956, and the New Hebrides (now the independent State of Vanuatu) was under the condominium of Great Britain and France, each exercising jurisdiction over its own subjects.

4. contiguous zone

The contiguous zone is the zone of the **high seas** contiguous to (i.e., bordering) a State’s **territorial sea** over which a coastal State may extend the operation of certain of its laws. A coastal State has the right to exercise control over the contiguous zone necessary to prevent or punish infringement of its customs, fiscal, immigration, or sanitary regulations within its territory or **territorial sea**. Under international law,

¹ The Jordan River is both a boundary river and a pluri-national river.

however, it is doubtful whether a State need claim or proclaim a contiguous zone before exercising contiguous zone jurisdiction.

The 1982 Convention on the Law of the Sea limits the contiguous zone to 24 miles from the baseline of the **territorial sea** (i.e., in most cases, 12 miles from the outer limit of the territorial sea).

5. continental shelf

The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its **territorial sea** throughout the natural prolongation of its land territory to the outer edge of the continental margin.² The continental shelf extends to a distance of 200 nautical miles from the baselines of the **territorial sea** if the outer edge of the continental margin does not extend up to that distance.

The coastal State's sovereign rights to explore the continental shelf and to exploit its natural resources are exclusive – if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State. Moreover, the rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

The natural resources of the continental shelf that may be explored and exploited consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species – that is, organisms that, at the harvestable stage, either are immobile or under the seabed and are unable to move except in constant physical contact with the seabed or the subsoil.

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or of the **airspace** above those waters. Thus, the exercise

² The “continental margin” comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.

of the rights of the coastal State over the continental shelf must not infringe or result in unjustifiable interference with navigation and other rights of other States.

6. exclusive economic zone

The exclusive economic zone is the area just beyond the **territorial sea**, extending up to 200 miles from the baseline of the **territorial sea**, in which the coastal State enjoys special authority for economic purposes.

According to the 1982 Convention on the Law of the Sea, the coastal State's prior and preferential interests in the resources of the exclusive economic zone are recognized as sovereign rights. At the same time, however, important interests enjoyed by all States in those waters are protected and specified. Although the coastal State has very extensive rights in the zone, the exclusivity of those rights is confined to the economic interests specified in the 1982 Convention. Thus, it is not an exclusive zone but, rather, an exclusive economic zone.

The rights of the coastal State in the exclusive economic zone include exploring, exploiting, conserving and managing the natural resources – living and non-living – of the waters superjacent to seabed and of the seabed and its subsoil, as well as production of energy from the water, currents, and winds. The coastal State also has jurisdiction with regard to (i) the establishment and use of artificial islands, installations, and structures, (ii) marine science research, and (iii) the protection and preservation of the marine environment.

7. Green Line

The “green line” refers to the boundary established in the General Armistice Agreement between Israel and Jordan, 3 April 1949. This boundary was called the “green line” because it was later printed in green on Israeli maps. Following the general demarcation of the boundary, joint military committees spent months working out the precise course of the line. These joint committees implemented small local changes to the boundary in order to meet the needs of the local population.

8. high seas

The high seas are all parts of the sea that are not included in the **exclusive economic zone**, in the **territorial sea**, or in the **internal waters** of a State. No State may purport to subject any part of the high seas to its territorial **sovereignty**.

9. internal waters

A State's internal waters are comprised of the lakes and rivers included in the State's land territory, as well as waters on the landward side of baselines from which the breadth of the territorial sea is calculated. Internal waters are subject to State **sovereignty**. There is no right of **innocent passage** through internal waters.

10. innocent passage

Innocent passage is navigation through the **territorial sea** for the purpose of traversing that sea without entering internal waters, including calling at a roadstead or port facility outside internal waters. Passage, though it must be "continuous and expeditious," includes stopping and anchoring so far as they are incidental to ordinary navigation or are rendered necessary by *force majeure* or by distress, or for the purpose of rendering assistance to persons, ships, or aircraft in danger or distress.

The right of innocent passage derives from the freedom of the open sea. Passage is innocent so long as it is not prejudicial to the peace, good order, or security of the coastal State. The exercise of the right of innocent passage must be exercised in accordance with the coastal State's laws and regulations. The coastal State's laws and regulations, in turn, must conform with the rules of international law. A non-innocent passage is not necessarily unlawful, because it may be exercised as a right by treaty.

A few additional points regarding innocent passage:

- Foreign fishing vessels may not fish within the territorial sea except by license, and their passage is not innocent if they do not observe the coastal State's laws.

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- Foreign submarines passing through the territorial sea must navigate on the surface and show their flag.
- There is some dispute regarding to whether foreign warships have the right to innocent passage through the territorial sea.

11.international leases

The legal effect of an international lease depends upon the facts in each case and, in particular, on the terms of the grant. In general, however, there is a presumption that the grantor retains residual sovereignty. For instance, by a Convention signed on 6 March 1898, China “cede[d] to Germany on lease, provisionally for ninety-nine years, both sides of the entrance to the Bay of Kiao-Chau.” Article 3 of the Convention provided that China “will abstain from exercising rights of sovereignty in the ceded territory during the term of the lease.” Thus, in this case, China clearly retained residual sovereignty, and Germany, the grantee, had no right to dispose of the territory to a third State.

12.jurisdiction

State jurisdiction concerns essentially the extent of each State’s right to regulate conduct or the consequences of events. Jurisdiction is an aspect of sovereignty. By virtue of its sovereignty, a State normally has jurisdiction over all persons and things within its territory. Thus, aliens come under the jurisdiction of a State once they enter its territory. Subject to the State’s obligations (by treaty or other international agreement) to the State of which the alien is a national, the local State may apply its laws to aliens in its territory, and the aliens must comply with and respect those laws.

13.sovereignty

According to one definition, “Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, *to the exclusion of any other State*, the functions of a State.” Thus, “sovereignty” is supreme authority over a particular territory -- a sovereign State must possess a legal

order that is distinct from any other's State's legal order and subordinate only to international law. Sovereignty, therefore, also implies political independence.

The undertaking of obligations under a treaty does not necessarily involve any abandonment of sovereignty, even though it may place restrictions on the exercise by a State of its sovereign rights. However, treaty obligations will amount to a surrender of sovereignty if they are such as to cause a State to lose or limit its independence by subordinating its will to that of another State. Here, the issue of consent is central: State A may have considerable forces stationed within the frontiers of State B. State A may also have exclusive use of a certain area of State B, and exclusive jurisdiction over its own forces. If, however, these rights exist with the consent of the host state, then state A has no sovereignty over any part of State B. In such a case, there has been a derogation from the sovereignty of State B, but State A does not gain sovereignty as a consequence.

A State may be recognized as having sovereign rights to only some of the territory it possesses. On a number of occasions, the international community has extended recognition to States whose territorial borders remained in dispute. Thus, the fact that the international community has extended recognition to a State – and thereby has recognized that State's sovereignty – does not settle the legal and political question of where that State's borders lie.

14.terra nullius

From the Latin, meaning "land of no one." *Terra nullius* is land that does not belong to any particular country. *Terra nullius* is open to acquisition by any State.

15.territorial sea

The sovereignty of a coastal state extends, beyond its land territory and **internal waters** to an adjacent belt of sea called the territorial sea. This sovereignty extends to the airspace above the territorial sea, as well as to its bed and subsoil. The sovereign rights of a coastal State over its territorial sea do not differ in nature from its sovereign rights over other parts of its territory (except that others have the right to **innocent passage**

through a State's territorial sea). The coastal State has exclusive jurisdiction within the territorial sea over matters of police and control.

The territorial sea is measured in one of two ways: Normally, the baseline of the territorial sea is the low-water mark³ along the coast, as marked on large-scale maps officially recognized by the coastal state. Alternatively, the baseline is marked by straight lines following the general direction of the coast, rather than all of the individual contours. This latter approach has been adopted in cases when the coast is geographically complex.

The territorial sea of each State is of even breadth. According to Article 3 of the United Nations Convention on the Law of the Sea, every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles. The vast majority of States claim territorial seas of 12 miles in breadth, or less. Some States in South America and Africa, however, claim territorial seas of 200 miles in breadth.

The territorial sea is sometimes referred to as the maritime belt, marginal sea, or territorial waters, although the latter term is also used to describe a State's internal waters and territorial sea combined.

16.territorial subsoil

The universally accepted rule is that the subsoil belongs to the state that has sovereignty over the surface.

17.thalweg

The *thalweg* is the middle of the main navigable channel in a boundary river. Absent agreement to the contrary, the *thalweg* marks the boundary between the States on either side of a boundary river.

³ The "low water mark" is the shoreline of a sea marking the edge of the water at the lowest point in the ordinary ebb tide.